

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 480 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGRUTI WD/O YOGESH MANUBHAI PATEL

Versus

S G CHAUDHARI (P.I)

Appearance:

MR KJ SHETHNA for Petitioner
Mr K M Mehta, APP for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/05/97

ORAL JUDGEMENT

This is yet another case adding increase of frequency of custodial death noticed by this Court during the last three months. I have also noticed that some Police officers have shown extra enthusiasm and zeal in detecting the crime pertaining to recovery of money on a complaint filed by a private party for offence under sections 406, 420, 467, 471 and 114 of IPC or under

section 138 and 142 of the Negotiable Instruments Act. There appears to be a feeling among the complainants to egg the police to use force or violence in order to make recovery or settle civil disputes.

2. The present petition has been filed by one Jagruti, a young widow aged 33 years, whose husband, Yogesh Patel admittedly died in police custody on 5.12.1996. It appears that on 14.2.1996, at police station, Gorva, a complaint was filed by one Harshadrai K Patel of Alembic Chemical Works Ltd., Vadodara. It is stated that the deceased Yogesh Patel, resident of Hubli of Karnataka, was introduced as a person capable of exporting goods. The said company, accordingly gave an order for export of medicine named Althrocin to Avis Trading Corporation, London (U.K.) on Letter head of Avis Trading Corporation, an order was placed for Althrocin tablets of 200 mg. and 500 mg. through the deceased Yogesh Patel. It is stated that he deposited a draft of Rs.44 lakhs with Alembic Chemicals. Yogesh Patel took delivery of the medicine and promised that he would complete all the formalities for exporting these goods to Avis Trading Corporation. He also conveyed that these goods will be exported along with other items which he was going to export and that after exporting the goods to Avis Trading Corporation, he would give Foreign Exchange to Alembic Chemicals within a week. However, Yogesh Patel did not take steps to export the goods. Inspite of the efforts made by the representatives of Alembic Chemicals in Hubli by contacting Mr Yogesh Patel, no documents of export was produced by him. The case of the company is that Yogesh Patel, instead of exporting the medicine, sold it in India and he had thus committed offences of criminal breach of trust and cheating. The police accordingly registered C.R. I-275/95.

3. Deceased Yogesh Patel was granted anticipatory bail by the High Court of Karnataka for a brief period by order dated 2.1.1996. He, thereafter, filed application for anticipatory bail under section 438 of Cr.P.C. before the Addl. Sessions Judge, Vadodara. The learned Judge granted anticipatory bail to Yogesh Patel by order dated 22.1.1996. While disposing of the anticipatory bail application, the learned Judge observed that it was essentially a dispute of civil nature. The learned Judge however, gave liberty to the police to apply for remand for taking Yogesh Patel in custody, if necessary. On 23/24.2.1996, P.I. Gorva police station submitted a report to the learned Judicial Magistrate, Vadodara City for remand of the deceased Yogesh to Police custody and also applied for adding sections 467, 468 and 471 IPC.

The said application was granted by order dated 26.2.1996. Yogesh Patel appears to have filed Revision application against the said order before the learned Sessions Judge, Vadodara, which was registered as Criminal Revision Application oNo.44/96. The learned Sessions Judge stayed the order of the learned Judicial Magistrate granting remand. The said Revision Application was rejected by the order of the learned Addl.Sessions Judge dated 25.3.1996. Yogesh Patel, against the said order, approached this Court by way of a writ petition which was registered as Special Criminal Application No.409/96. This Court, by order dated 26.7.1996, directed the deceased Yogesh Patel to appear before the Investigating Officer as and when he is called upon. The court also gave a direction that the investigation and interrogation may go on and the deceased accused Yogesh Patel should also accompany the Investigating Officer whenever he is asked to go for the purpose of investigation. Yogesh Patel appeared before the Investigating Officer on 29.7.1996. The details as to how he was treated by the I.O. has been given in the petition. Yogesh Patel also filed Misc.Criminal Application before this court for modification of the order dated 26.7.1996 which was registered as Misc.Criminal Application No.3351/96. It will be fruitful to notice some of the facts stated in the said Application. It is stated that Yogesh Patel appeared before the P.I. Choudhary of Gorva Police Station. During the course of investigation, the officers of Alembic Chemicals , namely, Haren Patel and Dinsha remain present throughout the interrogation. On 30.7.1996, Yogesh Patel again appeared before the P.I. Chaudhary. On that day, he was threatened with dire consequences if he did not pay a particular amount to Alembic Chemicals. It is stated in para 8 that -

"On 30.7.1996 once again the applicant presented himself before the Investigating Officer Mr Chaudhary. On that day the applicant was threatened with dire consequence in the event if the applicant does not pay a parpticular amount to the Alembic Company and the applicant was forced and mentally tortured with a view to see that the applicant pays something to Alembic. The applicant explained about the monetary constraints and also explained that the applicant has not committed any offence and that the applicant owes nothing to the Alembic Company. The applicant was also threatened that ithe applicant's wife will also be harassed and will

be taken on remand."

In para 9 it is stated that on 31.7.1996 as per the direction of S.P. Mr K C Patel, he reached the police station at 9.00 a.m. At that time, I.O. Mr Raval came and informed him that he should settle the matter under any circumstances with the Alembic Company. He also stated that there is lot of political pressuree on the police department in connection with this matter. On 31.7.1996, the applicant was not well. This was explained to Mr Raval and Mr Raval was kind enough to permit him to go home with instruction to report back at 4.30 p.m. in the evening. In the evening at about 4,30 p.m., Yogesh Patel reached the police station. There P.I. Mr Chaudhary immediately arrived along with Haren Patel and one Mr Mehta. It is stated that P.I. Chaudhary came very heavily upon Yogesh Patel and started abusing in filthy language. In para 9 of the said application, it is further stated that

"P.I. Chaudhary came downi very heavily upon the applicant and started giving filthy abuses. The applicant. submits that the abuses were also bad and filthy that it would not be proper to mention those words in this application. P.I. Choudhary did not spare even the wife, mother, sister of the applicant in giving abuses. Inasmuch as P.I. Chaudhary gave filthy abuses to the Advocates and Judges of this Hon'ble High Court. At that point of time the applicant was physically also assaulted in presence of Alembic officials Mr Haren Patel and Mr Mehta."

Certain more allegations have been made against P.I. Chaudhary in para 10 and 11 of the said application. In para 11 of the application it is stated that he was being harassed at the instance of Alembic Company. It was stated that he was being harassed and tortured in every possible manner for the purpose of extracting huge amount from him. He has further stated as follows:

"The applicant states that he is short of words to express the mental agony and physical cruelty whihch the applicant had to undergo since 28th of July till this date."

In para 17 of the main Special Criminal Application, the deceased Yogesh Patel had stated that he is suffering from heart ailment. He had received two attacks during the period 1984-95. It was also stated that his heart is

also enlarged and he is constantly under treatment and observation of the Doctor. He has also stated that daily he is taking one Sorbitrate to prevent any chest pain. Despite this ailment, he has been cooperating with the investigation. A counter affidavit to the said application has been filed by Mr Chaudhary, Police Inspector, Gorva Police Station. This clearly indicates that the said Chaudhary was aware of the ailment of Yogesh Patel as has been narrated in para 17 of the petition. The petitioner has placed on record a copy of the said Special Criminal Application which is at page 158. The affidavit of Chaudhary is at page 171 and the Misc.Criminal Application is at oipage 180. This Special Criminal Application No.409/96 was rejected by this Court by order dated 1.10.1996. After rejection of the petition by the High Court, Yogesh Patel was taken into custody on 30.11.1996. It further appears that during the pendency of the petition before this Court, Yogesh Patel was being interrogated on various dates, the details of which have been given in para 32 to 48. A reading of the averments made therein indicates as to how P.I. Chaudhary had behaved with Yogesh Patel. It appears that while Yogesh Patel was in custody, he was severely tortured. Certain photographs of his body have been placed on record. I have seen those photographs. There are injuries on the sole of the legs. There are injuries on the back and various other parts of the body. A just look at the photographs speaks in volume how the deceased was tortured while he was in police custody.

4. It appears from the english translation of the enquiry report of the Sub-Divisional Magistrate that on 5.12.1996, the deceased Yogesh Patel reported of chest pain and therefore, he was immediately taken to hospital where he was declared dead at 14.30 hrs. The post mortem report has also been placed on record. Injuries on the deceased is corroborated by the post mortem report. Presence of injuries of the body of the deceased is also mentioned in detail in the enquiry report submitted by the Sub-Divisional Magistrate. The Sub-Divisional Magistrate in her report has stated that the injuries on the body of the deceased Yogesh were ante-mortem. She has also stated that the injuries clearly indicate that the deceased accused was tortured while in police custody during the remand. She has stated that the police officers were knowing that the deceased was a heart patient. Inspite of that no medical opinion was taken. She has also stated that neither any medical examination was done nor any medical evidence was taken while applying for remand, particularly when the accused was suffering from heart ailment. The learned Sub-Divisional

Magistrate arraigned at the conclusion that the deceased Yogesh Patel was a patient of heart disease, and registration of the Criminal Case must have created mental tension, which must have led to cardio-respiratory failure resulting into death. Thus according to her, there is no reasonable suspicion of commission of any offence.

5. It appears that the said report was submitted by the Sub-Divisional Magistrate on 17.7.1996 to the District Magistrate. The District Magistrate forwarded the said report under a covering letter dated 28.4.1997 to the State Government which was received in the Home Depaprtment on 01.5.1997. If I say a word with respect to the inquiry under section 174 of Cr.P.C., the Sub-Divisional Magistrate has taken unusual time in completing the enquiry. The District Magistrate has taken the matter very casually and kept the report pending with him till 28.4.1997 i.e. for more than 2 months. It is a serious matter and explanation should be called from the District Magistrate as to how he kept the report submitted by the Sub-Divisional Magistrate for more than two months. *Prima facie*, it is a case of dereliction of duty. It must be born in mind that object of the proceedings under section 174 of Cr.P.C. is merely to ascertain whether person has died under suspicious circumstances or an un-natural death and if so, what is the apparent cause of death. The magisterial inquiry under section 174 of Cr.P.C. is of emergent nature, and it should be completed with utmost expediency, otherwise the very purpose is frustrated. The Magistrate holding the inquiry does not function as a court. In the instant case, though the Sub-Divisional Magistrate has taken unusual time of more than two months, but she did not bother to know if there was any relation of violence used by the police officers on the deceased while in custody and the cause of death. She has straightaway jumped on the conclusion that cause of death was cardiac arrest on account of mental tension. The District Magistrate has not applied his mind, except keeping the matter pending with him. Less said the better it is about ithe conduct of these two officers. They must realise that Legislature has cast an onerous duty on them, which should be discharged, honestly, faithfully and religiously.

5. Mr Raj Mohinder Singh Brar, Commissioner of Police, Vadodara City has filed a detailed affidavit. I have gone through the same.

6. Having gone through the entire materials on record and having heard the learned Coaunsel for the petitioner and the learned A.P.P., it is neither the advisable nor proper for me to express any opinion at this stage or to enter into any speculation as to whether it was a case of accidental death or otherwise. However, suffice it to say that the narration of the facts given above constitutes a cognizable offence which requires to be investigated as to the cause of death of Yogesh Patel and the persons responsible for the same which will also include complicity of the officials of complainant Alembic Chemicals Ltd. It will also be necessary to investigate if there is element of corruption therein and the officers of Alembic Chemicals passed any consideration to the police or other officials. Thus, the investigation requires for the offences under Prevention of Corruption Act against person alleged to have given bribe and persons alleged to have taken the bribe as well as for offences under Indian Penal Code.

7. Mr K J Shethna, learned Sr.Counsel submits that while investigation may proceed, the petitioner-widow may be awarded a suitable interim compensation. Legal position in this regard is now well settled. This Court, relying on various decisions of the Apex Court in Special Criminal Application No.101/96 decided on 21.2.1997 has taken the view as follows:

"With respect to the award of monetary compensation against the State in case of a custodial death, in addition to the traditional remedy, a compensation can be awarded as an interim measure in writ jurisdiction in a fit and suitable case. It depends upon each facts of the case. If the court finds *prima facie* that death is traceable to act or omission to concerned authorities, it would be just and proper to award a suitable compensation as an interim measure."

It is not in dispute that Yogesh Patel died while in police custody. It is evident from the post mortem report, the Inquest report as well as the photographs placed on record that Yogesh Patel was tortured while in custody. Thus, in my view, *prima facie*, death of Yogesh Patel is traceable to act or omission of the police authorities, and therefore, it is a fit case wherein this court should make appropriate award by interim measure to the petitioner-widow. It is pointed out that the petitioner is a young lady of 33 years age. She has one son-Ankit aged 9 years studying in VI standard and one

daughter Shivangi aged 6 years studying in Standard I. Both the students are studying at Hubli. it is stated in para 71 of the petition that for the assessment year 1994-95, return of the total income is 1,08,890/- on which she had to pay tax of Rs.20,845/-. Considering the facts of the case, some justice can be done if the young widow is paid a sum of Rs.3 lakhs as compensation by way of interim measure.

8. Mr Kamal Mehta, learned APP, under the instructions of State Government informs the Court that necessary instructions have been issued regarding the requirement to be followed in cases of arrest or detention, as laid down by the Supreme Court in D.K. Basu vs. State of West Bengal, reported in 1997(1) SCC 416. Custodial death being one of the worst crime, I hope and trust that the Gujarat Bar through Bar Council of Gujarat and High Court Bar Association will take lead in the country in ensuring the human rights, particularly in the field of custodial death by providing appropriate legal assistance right from High Court to below upto Taluka level.

9. In view of the aforesaid, this Special Criminal Application is allowed and following directions are given

(1) It is directed that the Addl. Director General of Police and the Director, Anti-Corruption Bureau, State of Gujarat shall take appropriate steps for registration of the case from the facts emanating from Special Criminal Application No.480/97 and from other material including the Enquiry Report submitted by the Sub-Divisional Magistrate and entrust the investigation to a competent officer with legal authority.

(2) The petitioner shall be paid a sum of Rs.3 lakhs as a measure of interim compensation. This amount shall be paid within two months from the date of receipt of the writ. The petitioner shall invest a sum of Rs. one lakh in the name of her son-Ankit and a sum of Rs. one lakh in the name of her daughter-Shivangi initially for a period of ofive years. It is clarified that the compensation awarded would not be taken into account for adjustment in the event of any other proceedings taken by the petitioner for recovery of compensation on the same ground. This will not affect any other liability of the respondent or any other persons involved in the cause of death of Yogesh Patel. After investigation and

trial, if the death of Shri Yogesh Patel is found attributed to any extent to the complainant-Alembic Chemicals Ltd. as well, it will be open for the State Government to take the proceedings against them in accordance with law for recovery of the amount of compensation.

Rule made absolute to the aforesaid extent with cost which is assessed as Rs.15,000/0 (Rs. Fifteen thousand only) to be paid to the petitioner within a period of two months.

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msp.